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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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IN THE MATTER OF	)	
	)	
Fish Creek Center, LLC and	)	
Prime Properties of Jackson	)	
Hole, LLC	)	
Wilson, Wyoming	)	
	)	
Respondents	)	
	)	ADMINISTRATIVE ORDER
Proceedings under Section 1414(g)	)	
of the Safe Drinking Water Act,	)	
42 U.S.C. § 300g-3(g)	)	Docket No. <b>SDWA-08-2004-0015</b>
	)	

The following Findings are made and Order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 1414(g) of the Safe Drinking Water Act (the Act), 42 U.S.C. § 300g-3(g), and its implementing regulations, as properly delegated to the Supervisors of the Technical and Legal Enforcement Programs of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.

FINDINGS

1. Fish Creek Center, LLC and Prime Properties of Jackson Hole, LLC (Respondents) are limited liability companies under the laws of the state of Wyoming as of September 2001 and January 1992, respectively, and therefore are "persons" within the meaning of 40 C.F.R. § 141.2.
2. Respondents own and/or operate a system, the Fish Creek Center Water System (the "System"), located in Teton County, Wyoming for the provision to the public of piped water for human consumption.

3. The Fish Creek Center Water System has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year and is therefore a "public water system" within the meaning of Section 1401(4) of the Act, 42 U.S.C. § 300f(4), and a "non-community water system" within the meaning of 40 C.F.R. § 141.2.
4. Respondents own and/or operate a public water system and are therefore "suppliers of water" within the meaning of Section 1401(5) of the Act, 42 U.S.C. § 300f(5) and 40 C.F.R. § 141.2. Respondents are therefore subject to the requirements of Part B of the Act, 42 U.S.C. § 300g,et seq., and its implementing regulations, 40 C.F.R. Part 141.
5. According to a September 2002 sanitary survey by an agent for EPA, Respondents operate a system that is supplied by one well. The system serves approximately 100 persons per day through 1 service connection and is open all year.

#### FINDINGS OF VIOLATION

##### I.

1. 40 C.F.R. § 141.21(a) requires each non-community public water system serving an average daily population of less than 1,001 with a groundwater source to monitor

its water at least once per quarter that the system serves water to the public to determine compliance with the maximum contaminant level (MCL) for total coliform bacteria as stated in 40 C.F.R. § 141.63.

2. Respondents failed to monitor the water for contamination by total coliform bacteria during the 1<sup>st</sup> (January-March) and 3<sup>rd</sup> (July-September) quarters of 2003 and the 3<sup>rd</sup> (July-September) quarter of 2001, in violation of 40 C.F.R. § 141.21(a).

## II.

1. 40 C.F.R. § 141.23(d) requires public water systems to monitor annually for nitrate to determine compliance with the nitrate MCL as stated in 40 C.F.R. § 141.62.
2. Respondents monitored for nitrate in December 2002 and January 2004 but failed to monitor in 2003, in violation of 40 C.F.R. § 141.23(d).

## III.

1. 40 C.F.R. § 141.201 requires owners and/or operators of public water systems to notify the public of any National Primary Drinking Water Regulation ("NPDWR") violations, including violations of monitoring requirements, and testing procedures found in 40 C.F.R. Part 141.
2. Respondents have not provided public notice of the 3<sup>rd</sup> quarter 2001 bacteriological monitoring violation in

Section I, in violation of 40 C.F.R. § 141.201.

IV.

1. 40 C.F.R. § 141.21(g) (2) requires any public water system that has failed to comply with a coliform monitoring requirement under 40 C.F.R. § 141.21 to report the violation to EPA within ten days after the system discovers the violation.
2. Respondents failed to report to EPA the noncompliance detailed in Section I, in violation of 40 C.F.R. § 141.21(g) (2).

V.

1. 40 C.F.R. § 141.31(b) requires public water systems to report any failure to comply with any National Primary Drinking Water Regulation (40 CFR Part 141) to EPA within 48 hours.
2. Respondents failed to report to EPA instances of noncompliance detailed in Sections II and III, in violation of 40 C.F.R. § 141.31(b).

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ORDER

Based on the foregoing Findings, and pursuant to Section 1414(g) of the Act, IT IS ORDERED:

1. Upon the effective date of this Order, Respondents shall comply with the requirement of 40 C.F.R. § 141.21(a) to perform quarterly bacteriological monitoring. Respondents shall comply with the MCLs as

stated in 40 C.F.R. § 141.63. Respondents shall report analytical results to EPA within the first 10 days of the end of the monitoring period, as required by 40 C.F.R. § 141.31(a).

2. Respondents shall comply with the nitrate monitoring requirements as stated in 40 C.F.R. § 141.23(d) to determine compliance with the nitrate MCL appearing at 40 C.F.R. § 141.62(b). Respondents shall report analytical results to EPA within the first 10 days following the month in which sample results are received, as required by 40 C.F.R. § 141.31(a).
3. Within 30 days of the effective date of this Order, Respondents shall provide public notice of the 3<sup>rd</sup> quarter 2001 bacteriological monitoring violation specified under the Findings of Violation, Section I, in this Order. This notice must be given by any one of the following methods: (1) posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system; (2) by mail or direct delivery to each customer and service connection; AND (3) any other method reasonably calculated to reach other persons served by the system, if they would not normally be reached by the notice described in (1) and (2), including publication in a local newspaper or newsletter distributed to customers;

use of E-mail to notify employees or students; or, delivery of multiple copies in central locations. Upon the effective date of this Order, Respondents shall comply with the public notification requirements at 40 C.F.R. § 141.201, et seq., following any future NPDWR violation. Respondents shall submit a copy of the public notice to EPA within 10 days of completion of the public notice, as required by 40 C.F.R. § 141.31(d).

4. Except where a different reporting period is specified in paragraph 5 below, upon the effective date of this Order, Respondents shall comply with 40 C.F.R.

§ 141.21(g)(2) by reporting any failure to comply with coliform monitoring requirements under 40 C.F.R.

§ 141.21 to EPA within ten days after the system discovers the violation.

5. Upon the effective date of this Order, Respondents shall comply with 40 C.F.R. § 141.31(b) by reporting any failure to comply with any National Primary Drinking Water Regulation (40 CFR Part 141) to EPA within 48 hours.

6. Reporting requirements specified in this Order shall be provided by certified mail to:

Kathelene Brainich  
U. S. EPA Region VIII (8ENF-T)  
999 18th Street, Suite 300  
Denver, Colorado 80202-2466

GENERAL PROVISIONS

1. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. § 141.1, et seq., or the Safe Drinking Water Act, which remain in full force and effect. Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the Act.
2. Violation of any term of this Order instituted under Section 1414(g) (3) (A), 42 U.S.C. § 300g-3(g) (3) (A), may subject the Respondents to an administrative civil penalty of up to \$27,500 per day of violation under Section 1414(g) (3) (B) of the Act, 42 U.S.C. § 300g-3(g) (3) (B), or a civil penalty of not more than \$32,500 per day of violation assessed by an appropriate U.S. District Court under Section 1414(g) (3) (C) of the Act, 42 U.S.C. § 300g-3(g) (3) (C).
3. Violation of any requirement of the SDWA or its implementing regulations instituted under Section 1414(b), 42 U.S.C. § 300g-3(b), may subject Respondents to a civil penalty of not more than \$32,500 per day of violation assessed by an appropriate U.S. District Court under Section 1414(b) of the Act, 42 U.S.C. § 300g-3(b).

4. The effective date of this Order shall be the date of issuance of this Order.

Issued this 30<sup>TH</sup> day of March, 2004.

**Michael T. Risner**

Michael T. Risner, Director  
David J. Janik, Supervisory Attorney  
Legal Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

**SIGNED**

Diane L. Sipe, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance  
and Environmental Justice

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE  
REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON MARCH 30, 2004.**